

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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UNITED STATES OF AMERICA, : 17-CR-00116(WES)  
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:  
vs. : United States Courthouse  
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:  
MARCIO ALEXANDRO : Thursday, October 18, 2018  
MARTINEZ-LARA, : 2:08 p.m.  
Defendant. :  
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE WILLIAM E. SMITH  
UNITED STATES CHIEF DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Government: GERARD B. SULLIVAN, AUSA  
U.S. Attorney's Office  
50 Kennedy Plaza  
Providence, RI 02903

For the Defendant: JOHN F. CICILLINE, ESQ.  
Cicilline Law Office  
381 Atwells Avenue  
Providence, RI 02909

Court Reporter: Lisa Schwam, CSR, CRR, RPR, RMR  
One Exchange Terrace  
Providence, RI 02903

Proceedings recorded by computerized stenography. Transcript  
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1 (In open court)

2 THE COURT: All right. Good afternoon. We're  
3 here in the matter of the United States vs. Marcio  
4 Alexandro Martinez-Lara, and we are here for sentencing  
5 this afternoon. Let's have counsel identify themselves  
6 for the record, please.

7 MR. SULLIVAN: Your Honor, Gerard B. Sullivan  
8 for the United States.

9 MR. CICILLINE: John Cicilline for Mr. Martinez.

10 THE COURT: Thank you very much. I've received  
11 the presentence investigation report that was prepared  
12 by the Office of Probation in this matter. And Mr.  
13 Cicilline, if I could just ask you to confirm on the  
14 record that you've had the opportunity to review this  
15 report with your client and that you've been able to  
16 answer all of his questions.

17 MR. CICILLINE: I'm sorry, Judge.

18 THE COURT: I'm asking you if you reviewed the  
19 presentence report with your client and were you able  
20 to answer all of his questions.

21 MR. CICILLINE: Have I gone over it with him?

22 THE COURT: Yes.

23 MR. CICILLINE: The answer is yes.

24 THE COURT: Okay. And I understand you have an  
25 objection to the presentence report?

1 MR. CICILLINE: I do, your Honor.

2 THE COURT: So do you want me to hear you on  
3 that now?

4 MR. CICILLINE: It's the objection to the memo I  
5 filed. I have nothing to add to it.

6 THE COURT: Okay. Mr. Sullivan, do you want to  
7 respond to the objection that Mr. Cicilline filed?

8 MR. SULLIVAN: Just briefly, your Honor, because  
9 I did not file a written report.

10 THE COURT: Right, you didn't, yes.

11 MR. SULLIVAN: Judge, as I understand it, Mr.  
12 Cicilline's objection is to a two-point adjustment. In  
13 reading his memo, it seemed to suggest that the Court  
14 would have to find that the gun was possessed in  
15 connection with the 924(c), which he's not being  
16 convicted of. The government's going to dismiss that  
17 count.

18 And it's true that the government will dismiss  
19 that count and he won't be convicted of that crime, but  
20 he possessed the gun in connection with the drug  
21 trafficking and in that is likely supported by the  
22 evidence, as probation pointed out. The gun is  
23 factually anomalous. In this case, the gun was in a  
24 hide with drugs. There was also ammunition in there.  
25 It was an apartment that was used primarily as a stash

1 house, not as a residence, for drug dealing. They  
2 found a large amount of valuable drugs in that stash  
3 house and even a kilo press, indicating it was a  
4 large-scale drug operation where a gun would facilitate  
5 the drug trafficking.

6 But this gun, if I recall the pictures  
7 correctly, was wrapped in green cellophane or blue  
8 cellophane. It was odd. And so that was probably the  
9 only triable issue in this case. There was  
10 overwhelming evidence on all the many other counts that  
11 he's pled guilty to. I would have given those facts to  
12 a jury at trial, but for here it wasn't necessary  
13 particularly with the joint recommendation to a minimum  
14 mandatory sentence. So we're going to dismiss Count  
15 Fifteen, the 924(c).

16 As probation points out, the Court could find  
17 that the gun was possessed in connection with drug  
18 trafficking. It's a different standard; it's  
19 preponderance of the evidence. Connection is pretty  
20 broadly defined. So the legal answer is probation is  
21 probably correct. The fact -- the practical answer is  
22 it doesn't matter. It doesn't matter to the  
23 government. It doesn't matter to the sentence that the  
24 Court is to impose or to the defendant. It just  
25 goes -- it's a technical question about the guidelines.

1 I'm not asking the Court to be a guidelines vending  
2 machine, and you have to correctly calculate them, but  
3 it doesn't matter.

4 And it doesn't even matter to an appeal if the  
5 Court imposes a 15-year sentence because he's agreed to  
6 waive the appeal. So it's a dispute without a purpose.

7 THE COURT: Okay. Thank you very much.

8 MR. SULLIVAN: Thank you.

9 THE COURT: All right. I've considered the  
10 defendant's arguments set forth in the motion or  
11 objection to the two-point enhancement and the  
12 government's response, and I believe the objection has  
13 no merit. And so for that reason, I'm going to deny  
14 the objection and the enhancement will stand. So I  
15 will review now on the record the advisory guideline  
16 calculations as they are described in the presentence  
17 report.

18 So there are 12 counts in this case that the  
19 defendant has pled guilty to, and they are grouped  
20 according to the grouping rules in the guidelines.  
21 Group one pertains to the distribution of fentanyl,  
22 cocaine, possession with intent to distribute, the  
23 same, as well as the heroin and methamphetamine. And  
24 the base offense level for those counts is level 32.  
25 And that's all set forth in paragraph 38 of the report.

1           Now, at paragraph 39, it notes there's a  
2       two-level increase because the firearm was possessed  
3       and it was in close proximity to the controlled  
4       substances. That's the matter we just discussed.  
5       There's a two-point upward adjustment because the  
6       defendant maintained the premises involved for the  
7       purposes of manufacturing or distributing controlled  
8       substances. That yields an adjusted offense level of  
9       36.

10           Counts Thirteen and Fourteen, which relate to a  
11       felon in possession of a firearm, an alien in  
12       possession of a firearm, are grouped together in group  
13       two, and the base offense level in that group is a 24.  
14       There's a four-point upward adjustment because the  
15       firearm was possessed in connection with another felony  
16       offense. That yields an adjusted offense level of 28.  
17       The combined offense level under the guidelines  
18       grouping rules is, therefore, a level 36.

19           Now, paragraph 53 notes that the defendant  
20       receives an additional enhancement, one-point  
21       enhancement, because of his two prior felony  
22       convictions and, therefore, he is classified as a  
23       career offender under Section 4B1.1. So he lands at  
24       level 37. Now, the defendant receives three points off  
25       his guideline calculation for acceptance of

1 responsibility so the total offense level is 34.

2 The defendant's criminal history is summarized  
3 in paragraph 63 of the report. He has four criminal  
4 history points. He receives two additional points  
5 because he committed this offense while under another  
6 criminal justice sentence of probation. That gives him  
7 six criminal history points. And this would otherwise  
8 put him in category III, but because of his  
9 classification as a career offender under 4B1.4 and as  
10 an armed career criminal, his criminal history  
11 calculation is elevated to level VI.

12 So as a result of his total offense level of 34  
13 and Criminal History Category of VI, the defendant's  
14 advisory guideline range is 262 to 327 months of  
15 imprisonment. And I would just note that the offenses  
16 involved various mandatory minimums, including a  
17 mandatory minimum of 15 years on Count Thirteen.

18 So with all that said, I'll turn to the  
19 government first for its recommendation.

20 MR. SULLIVAN: As the Court's aware, this is a  
21 joint recommendation for 15 years. The defendant's  
22 illegally present in this country. He's been here for  
23 years. He's been convicted in this courthouse and  
24 others under various aliases.

25 This time he's in a mountain of trouble. He's

1 admitted his identity finally and agreed to deportation  
2 by stipulation. It's clear he's not Victor Cardona or  
3 Sandro Martinez or any other alias that he's used.  
4 He's Marcio Alexandro Martinez-Lara, a 45-year-old  
5 offender born in Bonao, the Dominican Republic.

6 If the Court accepts the joint recommendation,  
7 he'll spend the next 15 years in the custody of the  
8 Bureau of Prisons at taxpayer expense. And he still  
9 has a state outstanding indictment for drug trafficking  
10 under the name Sandro Martinez. I don't know what  
11 they're going to do with that, but that may add some  
12 time.

13 In any event, with the admissions and  
14 stipulations and the joint recommendation, he'll go  
15 back out -- he'll go back to Bonao to live out his 60s.  
16 I think that despite the calculations in this and  
17 despite how much higher just charging like the 924(c)  
18 could have made this case, I think 15 years for a  
19 45-year old offender where he's going to be deported  
20 anyway is a full and fair resolution of the case. And  
21 so that's what I recommend to the Court.

22 So in structuring it, Count Thirteen, the  
23 minimum mandatory is 15 years. Count Fourteen, the  
24 maximum sentence is ten years. So it would be ten  
25 years on Count Fourteen, fifteen years on all the



1 remaining counts. Counts Thirteen and Fourteen carry a  
2 maximum of three years of supervised release. Some of  
3 the remaining counts require five years so it would be  
4 three years on Thirteen and Fourteen, five years  
5 supervised release on the balance.

6 He's stipulated to deportation and so I'd ask  
7 that there be a condition of supervised release that he  
8 surrender to immigration officials and once deported  
9 remain outside of the United States as a further  
10 condition of supervised release. No fine in this case.  
11 And there are \$1400 worth of special assessments.  
12 Thank you.

13 THE COURT: All right. Thank you, Mr. Sullivan.  
14 Mr. Cicilline.

15 MR. CICILLINE: In the world of science fiction,  
16 there are forces that permit us to go back in time. Of  
17 course, we all understand that in reality it's not  
18 possible for such a thing to happen. But if it were  
19 possible to go back in time as it relates to this  
20 defendant, I think we'd have a different outcome and I  
21 think that he probably would not be here today.

22 He grew up in a tough environment, abusive home.  
23 He left that environment to go live with an uncle in  
24 Puerto Rico and that kind of abuse continued on. In  
25 the beginning he was involved in some very menial jobs

1 but never able to make enough money to support the  
2 family, the extended family, that he basically adopted;  
3 the number of kids he had, the friends, the relatives,  
4 all the people he felt responsible for. So he turned  
5 to this life in drugs. And until he got caught, he  
6 never ever thought about the implications of what he  
7 was doing and how it impacted on other people.

8 Since his arrest, he's gone through a change in  
9 life, so to speak. He now realizes the immorality of  
10 what he did, the unlawfulness of what he did, and he's  
11 truly sorry about it. And I'm not certain that I can  
12 convey to the Court sufficiently the change that this  
13 man has made in his life. I suggested in the pretrial  
14 memorandum which I filed in this case that not only has  
15 he demonstrated this change by his lack of trouble at  
16 Wyatt, he's indicated that he'd be willing to help the  
17 government to stop the kind of thing he was doing. And  
18 for him, that's a major turnabout in his life.

19 He is a totally different person than he had  
20 been while he was out and doing all these illegal  
21 things. He's got a new commitment. I don't know  
22 whether it comes from involvement in religion at Wyatt  
23 or whatever it was, but he now is committed to keeping  
24 his life straight.

25 And Congress had this in mind when it enacted

1       that portion of the Sentencing Act that we now refer to  
2       as the parsimony principle. The sentence imposed  
3       should not be greater than necessary to achieve the  
4       objectives. I know he's a repeat drug offender. I  
5       know that his life up to the time of this arrest has  
6       not been a model for anybody, but he has changed and he  
7       is a different person.

8               And under the principle of parsimony, 15 years  
9       is a long, long time. And I don't think that even that  
10      much is necessary, but if it must be, it must be.  
11      Fifteen years will accomplish all the objectives  
12      intended for sentencing. It will demonstrate to the  
13      Court that he understands the change in his life but,  
14      more importantly, it will say to him that you can't do  
15      this again. And if you do, the next time there's going  
16      to be no opportunity to get out. So I suggest to you  
17      that you follow our joint recommendation and sentence  
18      the defendant accordingly.

19             THE COURT: Thank you, Mr. Cicilline.

20             All right. Mr. Martinez, do you wish to say  
21      anything before I impose the sentence?

22             THE DEFENDANT: Yes.

23             Good afternoon, your Honor.

24             THE COURT: Good afternoon.

25             THE DEFENDANT: Your Honor, I understand and I

1 know that I've committed a very serious crime. When I  
2 was sentenced in the past, at that time I did not have  
3 any children, but currently I'm a father of five  
4 children. I am so very sorry of what I did. I  
5 understand that I have caused harm to many people. But  
6 to leave my children -- or after leaving my children, I  
7 realize that there is nothing as important or more  
8 important than family.

9 Your Honor, I want you to understand that what  
10 I'm saying does not mean that I'm telling you that I do  
11 not deserve a sentence. What I do want you to  
12 understand, your Honor, is that I feel very bad and I  
13 feel very guilty about what I did, especially because  
14 I'm leaving my children behind. They'll be alone. And  
15 I'm leaving my family.

16 I know that he knows that we are human. And I  
17 hope you take into account that I will be deported to  
18 my home country. I know that in my country I will do  
19 things very differently because I have changed, and I  
20 have changed by just seeing my children when they see  
21 me. And I didn't see things as I see them now, but I  
22 want you to know, your Honor, that I'm going back to my  
23 home country and I will not do the things that I did  
24 before. I thank you very much for listening to me.

25 THE COURT: Thank you, Mr. Martinez. You can

1 remain standing.

2 I appreciate your comments, and I appreciate the  
3 comments of Mr. Cicilline on your behalf. And I'm very  
4 happy to hear that he believes that you have decided to  
5 change your behavior and your ways. I'm glad to hear  
6 you say it because what is clear from your criminal  
7 history and from this offense is that you've been  
8 pretty much dealing drugs for a living for a long time.  
9 And the amounts of drugs involved in this case were  
10 very serious, significant amounts. The types of drugs  
11 that you were involved with are bringing terrible  
12 destruction to our community and communities all around  
13 the country.

14 Every time I impanel a jury, as I did yesterday  
15 in a case involving narcotics, I have to speak to  
16 people whose families have been partially destroyed  
17 because of opioid addiction and death from overdose. I  
18 listened to several people yesterday in the jury that I  
19 impaneled who cried uncontrollably as I spoke to them  
20 about what had happened in their lives and their  
21 families as a result of the drugs, so much that they  
22 didn't feel they could be a fair juror.

23 This is something that I hear over and over and  
24 over again, and we read about it and hear about it in  
25 the newspapers and magazines and you watch it on TV and

1 we just see it all around us. And it just can't be  
2 overstated the role that you played in distributing  
3 these killer drugs into the community. So I hope you  
4 realize just how horrible that is, because you bear  
5 responsibility, you and a lot of others, but with  
6 others you bear responsibility for bringing this  
7 destruction upon so many people.

8 And I don't want to sugarcoat it; that's really  
9 what it is. And I hope you're sincere when you tell me  
10 that you have finally decided you don't want to be a  
11 part of that destruction. I hope you are sincere.

12 So the recommendation here, I'm prepared to  
13 accept it. The guideline range obviously is much  
14 higher than what is recommended. There are many ways  
15 that the sentence in this case could have been much  
16 higher. The government could have charged you in a  
17 different way to bring upon more prison time. I know  
18 you're aware of all that, the way they handled the  
19 charge and the gun; they could have charged other  
20 things, that I think you're probably aware of from your  
21 conversations with Mr. Cicilline, to make the sentence  
22 in this case higher.

23 There are a lot of reasons why a higher sentence  
24 could be justified, certainly given the amounts of  
25 drugs and given your history, but for all the reasons

1       that Mr. Sullivan and Mr. Cicilline outlined, I don't  
2       believe a higher sentence is necessary. So I'm going  
3       to accept the recommendation today that they have  
4       provided here on the government's behalf and on your  
5       behalf.

6               I do want to reiterate something that I think  
7       Mr. Sullivan said, which is that because of the amount  
8       of time that you're going to do on these charges and  
9       the criminal history that you have, and given how old  
10      you'll be when you get out of prison, which will be  
11      close to 60 years old, if you were to come back to the  
12      United States and engage in this kind of activity, you  
13      would be almost guaranteeing yourself a life sentence.  
14      So if you make that choice, you're really making the  
15      choice to spend the rest of your life in prison. I  
16      don't think that's what you want to do, but I just want  
17      to make sure you know the consequences of any choices  
18      that you make.

19             All right. In the matter of the United States  
20      vs. Marcio Alexandro Martinez-Lara, the defendant is  
21      sentenced to -- I need to spell this out by count. It  
22      will be ten years on Counts One, Two, Three, Four, Five  
23      and Six, Seven, Eight, Nine, Ten, Eleven and Twelve and  
24      Fourteen to run concurrent with the sentence of 15  
25      years on Count Thirteen. So the total sentence for the

1 defendant is 15 years, 180 months.

2 This will be followed by a supervised release  
3 term of five years on Counts Eight, Nine and Twelve,  
4 Thirteen, and three years on Counts One, Two, Three,  
5 Four, Five, Six, Seven, Ten and Fourteen to run  
6 concurrent with each other. So the total is five  
7 years.

8 There is no restitution in this case. There is  
9 no fine. There is a special assessment of \$100. The  
10 only special condition of his supervised release is as  
11 follows: Upon completion of the defendant's term of  
12 imprisonment, he will be surrendered to a duly  
13 authorized immigration official for deportation in  
14 accordance with the established procedures of the  
15 Immigration and Naturalization Act and, if deported,  
16 the defendant shall remain outside of the United  
17 States.

18 So the plea agreement in this case provided that  
19 the right to appeal is waived if the defendant -- or if  
20 I sentence the defendant to the recommended term of 15  
21 years. So given that I've done that, the right to  
22 appeal is waived.

23 All right. Is there anything further?

24 (Brief pause)

25 THE COURT: That's a misprint on the sheet.



1 It's 1300 -- no, 1400. \$1400 special assessment, not  
2 100. Any other corrections or modifications?

3 PROBATION OFFICER: Could you Count Eleven as  
4 well in the supervised release.

5 THE COURT: I thought I said Eleven, but if I  
6 didn't, then Eleven is -- Count Eleven is three years  
7 of supervised release also concurrent.

8 Anything else from the government?

9 MR. SULLIVAN: The standard deportation  
10 condition on supervised release.

11 THE COURT: I just said that.

12 MR. SULLIVAN: Oh, you did. I'm sorry. I  
13 missed that part then.

14 Finally, your Honor, I move to dismiss Count  
15 Fifteen.

16 THE COURT: All right. And the motion to  
17 dismiss Count Fifteen is granted.

18 Was there a forfeiture allegation here?

19 MR. SULLIVAN: There is. Two motor vehicles.  
20 The preliminary orders are already entered.

21 THE COURT: Okay. All right. Anything else  
22 from the defendant?

23 MR. CICILLINE: No, your Honor.

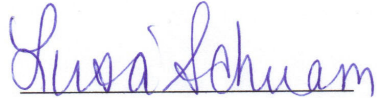
24 THE COURT: Very good then. We'll be in recess.

25 (Time noted: 2:39 p.m.)

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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the  
record of proceedings in the above-entitled matter.



Official Court Reporter

November 21, 2019